IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 985 of 1982
with
First Appeal No. 1696 of 1983

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAURILAL JAIN & CO

Versus

UNION OF INDIA

Appearance:

1. First Appeal No. 985 of 1982
MR GAURANG H BHATT for Appellant
MR RM VIN for Respondents

2. First Appeal No.1696 of 1983
MR RM VIN for appellants
MR GAURANG H BHATT for respondent

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 09/12/2004

COMMON ORAL JUDGEMENT

1. These two First Appeals under Section 96 of the Code of Civil Procedure ('the Code' for short) arise from one and the same judgment and decree dated 30.11.1981 rendered in Special Civil Suit No.21 of 1977 by the learned Joint Civil Judge (S.D.)., Surendranagar by which the suit filed by the appellant of First Appeal No.985 of 1982 has been partly decreed in its favour to the extent of Rs.5,131.50 Ps. together with interest at the rate of 6% per annum from the date of the suit till the recovery and proportionate cost of the suit from the appellants of First Appeal No.1696 of 1983.

2. The appellant of First Appeal No. 985 of 1982 was the plaintiff whereas appellant Nos.1 and 2 of First Appeal No.1696 of 1983 were defendant Nos.1 and 2 respectively in the suit. Therefore, the parties are hereinafter referred to in this judgment as "the plaintiff" and "defendant No.1 and defendant No.2" for the sake of convenience.

3. The plaintiff is a registered partnership firm. It was the case of the plaintiff that in all 13 consignments of salt bags of the plaintiff firm were booked from Kharaghoda to Gaya which were purchased from Hindustan Salt Limited. The plaintiff firm was the owner and endorsed consignee of the said goods. At the time of effecting delivery of seven consignments of first lot, the plaintiff was delivered only 1847 salt bags out of 2200 bags and 353 bags were not delivered by the defendants. The plaintiff firm therefore suffered damage to the tune of Rs.6748.64 ps. because of the short delivery of goods. As per further case of the plaintiff, in the second lot of 1375 salt bags, only 1161 salt bags were delivered and 214 bags were not delivered and thereby the plaintiff firm suffered damage to the tune of Rs.4303.12 Ps. because of short delivery. As per the case of the plaintiff, in all there were short delivery of 567 salt bags and damage suffered by the plaintiff was Rs.11,051.67 Ps. As per the case of the plaintiff, short delivery was because of the misconduct, carelessness and negligence of the railway administration and its servants. It was also the case of the plaintiff the defendant No.1 being the booking and contracting party and defendant No.2 being the delivery Railways, both of them were jointly and severally liable to pay the amount of Rs.11,051.67 Ps. by way of damages.

4. The plaintiff served notice upon the defendants and also claimed interest on the aforesaid principal amount at the rate of 12% per annum which was to the tune

of Rs.2598.24 Ps. as well as Rs.50 /- being notice charges and in all the plaintiff claimed Rs.13,700/- The plaintiff, therefore, prayed to pass decree for the said amount with running interest at the rate of 6% per annum from the date of filing of the suit till the amount is realised together with costs.

5. The suit was contested by the defendants, through Western Railways, by filing written statement at Ex.15 wherein it was denied that the plaintiff was a firm registered under the Indian Partnership Act; number of bags loaded and weight shown in the plaint were not admitted; ownership of the plaintiff over the goods in question was denied, it was denied that endorsed consignee has right to file and maintain the suit; the short delivery and its value, as alleged in the plaint, was denied. It was also pleaded that consignments were booked at the owner's risk rate. Therefore, railway administration was not liable for short delivery and the plaintiff was not entitled to claim any amount from the defendants. It was, therefore, prayed to dismiss the suit.

6. The learned trial Judge framed issued at Ex.18. On behalf of the plaintiff, the following witnesses have been examined:

(i) Shantilal Savalal Jani Ex.141
(ii) Satish Shantilal Bhatt Ex.152
(iii) Bimalkumar Hiralal Ex.156
(iv) Shankarlal Maganlal Lakhtaria Ex.157.

On behalf of the plaintiff, several documents, including Railway Receipts, were produced whereas nobody was examined on behalf of the defendants.

7. On appreciation, evaluation and critical analysis of the evidence adduced before the learned Trial Judge, he came to the conclusion that the plaintiff is a duly registered partnership firm, the plaintiff was the owner and endorsed consignee in respect of two consignments of first lot and all five consignments of second lot and, therefore, the plaintiff suffered damage to the extent of 5131.50 Ps. on account of short delivery of two consignments of first lot and five consignments of second lot which was the result of misconduct and negligence of the defendants. Therefore, the defendants were liable to pay the said amount together with interest at the rate of 6% from the date of the suit till recovery of the said amount with proportionate cost and he passed the decree for the said amount. It was also held that so far as

other six consignments were concerned, the plaintiff firm was neither owner, endorsed consignee, sender or receiver. Out of these six consignments, one was endorsed in favour of one Ashokkumar and other five consignments were endorsed in favour of one Mohanlal. Though the plaintiff firm had purchased all these consignments but thereafter some of them were reendorsed in favour of other parties and that is why the plaintiff was not entitled to claim damages for short delivery from the said six consignments and accordingly the learned trial Judge has refused to pass decree for the short delivery of goods in respect of these six consignments which are shown at Sr.Nos.8 to 13 in the table shown in paragraph 19 of the judgment of the trial Court.

8. The plaintiff, being aggrieved by the said judgment, dismissing a part of his claim, has filed First Appeal No.985 of 1982 claiming rest of the amount whereas the defendants have filed First Appeal No.1696 of 1983 against the decree to the extent of Rs.5131.50 Ps. It is this judgment and decree which is now on the anvil before this Court at the instance of the plaintiff as well as the defendants.

9. Mr. GH Bhatt, learned advocate of the plaintiff, has contended that the extent of the claim disallowed runs counter to the principles enunciated by a Division Bench of this Court in Union of India v. M/s. Tola Ram Hari Ram and another, 1981 ACJ 207. He has also contended that the learned trial Judge has erred in holding that so far as the six consignments were concerned, the plaintiff firm was neither owner, endorsed consignee, sender or receiver of those six consignments. In fact, according to the learned advocate of the plaintiff, the plaintiff was the owner of the said six consignment also. According to him, the learned trial Judge has held that the plaintiff firm had purchased all these six consignments but thereafter endorsed in favour of a third party and, therefore, the plaintiff ceased to be the owner of the consignment. The said finding is erroneous in view of the reported decision of the Division Bench of this Court in M/s. Tola Ram's case (supra). It is also settled by the above referred to judgment of the Division Bench of this Court that even the consignor can also claim and recover the damages caused to it from the railway administration. Therefore, the learned trial Judge has committed grave error in not allowing full claim made by the plaintiff when the plaintiff has proved short delivery of 567 salt bags from all the 13 consignments. Therefore, he urged that the impugned judgment and decree not allowing full claim

deserves to be quashed and set aside by allowing the full claim made by the plaintiff and accordingly decree for remaining amount of RS.7200/- may be passed by allowing First Appeal No.985 of 1982. He, therefore, urged to allow the appeal.

10. In counter submission, Mr. RM Vin, learned advocate of the defendants, has contended that the judgment and decree under appeal to the extent they are against the defendants are erroneous, bad in law, against the weight of evidence adduced on record and contrary to the principles of justice, equity and good conscience. According to him, the learned trial Judge has erred in holding that the plaintiff had become owner of two consignments of the first lot and five consignments of the second lot. It is also contended by him that merely because the plaintiff was endorsee of railway receipts, it had no right to maintain the suit. It is also asserted that there was no negligence or carelessness on the part of railway administration. The trial court ought to have appreciated that the goods were carried on owners risk rate and, therefore, the railway administration could not be held to be liable on the ground of negligence. On aforesaid premises, it is prayed that the judgment and decree partly allowing the claim to the extent of Rs.5131.50 Ps. deserves to be quashed and set aside by allowing the First Appeal No. 1696 of 2003 filed by the defendants. It is also contended that there is no substance in the First Appeal No.985 of 1982 filed by the plaintiff claiming full amount of damages as per the claim made in the plaint. It is, therefore, urged to allow First Appeal No.1696 of 1983 and to dismiss First Appeal No.985 of 1982.

11. I have considered the submissions made by the learned advocates appearing for the parties. I have also gone through the impugned judgment and decree, copies of the evidence supplied by the learned advocates for the parties at the time of hearing and also considered the judgment cited at the bar.

12. There is no much dispute about the plaintiff being a registered partnership firm which has booked 13 consignments of salt bags which were purchased from Hindustan Salt Limited which were booked from Kharaghoda to Gaya. There is also no dispute to the fact that at the time of effecting delivery of eight consignments of first lot, the plaintiff was delivered only 1847 bags out of 2200 bags and thus there was a shortage of 353 bags of salt. There is also no dispute that so far as the second lot of 1375 salt bags are concerned, only 1161 salt bags

were delivered and 214 salt bags were short delivered. Thus, in all 567 salt bags were short delivered from 13 consignments. There is no dispute and it is an admitted fact that at the initial stage the Hindustan Salt Limited was the consignor and the consignee of the consignment. This becomes clear from the railway receipts produced at Exs.79 to 104 which also includes table corresponding to each railway receipt. In each railway receipt, the sender's name is shown to be Hindustan Salt Limited and the consignee is self. Thereafter Hindustan Salt Limited had endorsed the railway receipt in favour of a party to whom the goods were sold. The purchased party had again endorsed the railway receipt in favour of a party which had purchased the goods from the first purchaser and so on. Thus, each railway receipt is endorsed in this way and the oral evidence shows that the party is whose favour the railway receipt is last endorsed has become the owners of the said consignment. To prove that the plaintiff was either owner or the endorsed consignee of the goods for which it had paid the value of the consignment to the former endorsee, the plaintiff had examined witnesses. The plaintiff's case from the very beginning was that it had purchased the goods i.e., the consignments of salt from different parties by paying the value of the consignments and getting the railway receipt endorsed in its favour. Therefore, it is clear that the railway receipts which bear the last endorsement in favour of the plaintiff firm was of the ownership of the plaintiff. The only question raised was as to whether the plaintiff firm was the owner of all the 13 consignments. It becomes clear from the bills Exs.143 to 147 that the plaintiff had purchased not only the suit consignments but also other consignments from those parties on the same day. Thus, it becomes clear from the fact that in these bills the total number of railway receipts were more than 13. The learned trial Judge believed the case of the plaintiff that the plaintiff was the owner of seven consignments. The trial court accepted the case of the plaintiff that the plaintiff was the owner of seven consignments mentioned at Sr.Nos.1 to 7 in paragraph 19 of the judgment whereas the plaintiff was not the owner of consignments from Sr.Nos.8 to 13 shown in para 19 of the judgment. So far as other six consignments were concerned, according to the trial Court, the plaintiff firm was in no way concerned with these six consignments. The plaintiff was neither owner, endorsed consignee, sender or receiver of these six consignments because all these six consignments were in favour of third party and, therefore, the plaintiff ceased to be the owner and hence the plaintiff was entitled to claim damages for short delivery of those

seven consignments only which were shown in paragraph 22 of the judgment and accordingly passed the decree for damages to the tune of Rs.5131.50 Ps.

13. According to this Court, the finding recorded by the trial court that on reendorsement of the consignee by the plaintiff on the third party, the plaintiff ceased to be the owner of the consignment is erroneous. The Division Bench of this Court has enunciated the principle that even the consignor has a right to file suit claiming short delivery by way of damages for short delivery or pilferage. In this connection, it would be appropriate to refer to the judgment of the Division Bench of this Court in M/s. Tola Ram (supra). In the said judgment this Court has interpreted the provisions of sections 73 and 76 of the Indian Railways Act, 1890. The question raised before the Division Bench of this Court was whether consignor who was not an owner of a part of the goods is competent to file a suit for recovery of compensation and the said question was answered in the affirmative by this Court that the consignor can file suit for recovery of compensation.

14. Applying the principles laid down by the Division Bench of this court in above referred to judgment to the facts of the present case, I am of the opinion that short delivery from 13 consignments has been proved by the plaintiff. The trial court has dismissed a part of the claim only on the ground that the plaintiff has reendorsed the said consignment and, therefore, ceased to be the owner of the said consignment which is contrary to the principal laid down by the Division Bench of this Court. Therefore, according to this Court, the judgment and decree rejecting a part of the claim made by the plaintiff is erroneous and is required to be modified by allowing the full claim made by the plaintiff in the suit. The trial court has passed decree to the extent of Rs.5131.50 Ps. Therefore, the plaintiff is entitled to receive remaining amount of Rs.7200/- on account of short delivery of the other six consignments shown at Sr.Nos.8 to 13 in paragraph 19 of the impugned judgment and to that extent the impugned judgment and decree is required to be modified by allowing the appeal filed by the plaintiff and dismissing the appeal filed by the defendants.

15. For the foregoing reasons, First Appeal No.985 of 1982 filed by the plaintiff succeeds and accordingly it is allowed. Accordingly it is held that the plaintiff is entitled to recover additional amount of Rs.7200/= together with interest at the rate of 6% per annum from

the date of filing of the suit till the amount is realised, with proportionate costs. First Appeal No.1696 of 1983 filed by the defendants is dismissed with no order as to costs. Modified decree to be drawn accordingly.

16. Mr. RM Vin, learned advocate of the defendants, states that the defendants shall deposit the aforesaid amount within a period of three months from today with the trial court, subject to the right of the defendants to take appropriate legal actions as may be available to them.

(A.M. Kapadia, J.)

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